

**SEP 14 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LARRY D. SMITH,

Defendant - Appellant.

No. 06-30115

D.C. No. CR-97-00193-WFN

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Wm. Fremming Nielsen, Senior Judge, Presiding

Submitted September 11, 2006\*\*

Before: PREGERSON, T. G. NELSON, and GRABER, Circuit Judges

Larry Dean Smith appeals the sentence of one year and one day of imprisonment and 23 months and 364 days of supervised release imposed following the revocation of his supervised release on a conviction for assault in

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 18 U.S.C. §§ 113(a)(6), 1151, and 1153. He correctly contends, and the government concedes, that the district court plainly erred in imposing a sentence that exceeded the three-year statutory maximum set forth in 18 U.S.C. § 3583(b)(2). We therefore vacate the district court's judgment and remand for the district court to impose a sentence in compliance with § 3583(b)(2). *See United States v. Guzman-Bruno*, 27 F.3d 420, 423 (9th Cir. 1994).

**VACATED and REMANDED.**